IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 137 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ATEEQUE AHMED AYUB SHAH THRO.P.O.A. HOLDER

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 137 of 2004
MR DAKSHESH MEHTA for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1-3
NOTICE SERVED BY DS for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 19/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP is directed to waive service of Rule for respondent Nos. 1 to 3.

Accordingly, service of Rule is waived. Since no orders are being passed against respondent No.4, notice of Rule is not required to be issued to respondent No.4.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. Mr Dakshesh Mehta, learned counsel for the petitioner has submitted that the petitioner is the owner of truck bearing No.MH-15G-2884 which was carrying the scrap of vehicle parts and that, therefore, the authorities could not have detained the petitioner's truck.

3. Mr Gori, learned AGP for the respondent authorities states that the petitioner's truck was carrying dismantled parts of a motor vehicle and, therefore, the motor vehicle tax is required to be paid for the said parts of the vehicle being carried in the petitioner's truck. Mr Gori further states that if the petitioner has contravened any provision of the Motor Vehicles Act or the Rules thereunder in respect of the dimensions and/or weight of the cargo being carried in the above numbered truck, the respondent authorities would like to recover appropriate amounts from the petitioner in accordance with law.

Mr Gori relies on the affidavit in reply dated 19.1.2004.

4. It appears that in any view of the matter, the respondent authorities are not demanding any motor vehicle tax in respect of the truck bearing No. MH-15G-2884 and the only controversy is about the tax liability in respect of the cargo being carried in the aforesaid truck.

5. In view of the above, without prejudice to the rights and contentions of respondent Nos. 1 to 3 for levying and demanding motor vehicle tax in respect of the aforesaid cargo and without prejudice to the rights and contention of respondent No.4 whose cargo is being carried in the truck to challenge any levy or demand of tax from the said respondent, this petition is disposed of in terms of the following direction :-

Respondent Nos. 1 to 3 shall take decision regarding levy and demand of any amounts from the petitioner in respect of the dimensions and/or weight of the cargo being carried in the petitioner's truck bearing No. MH-15G-2884 lying at Songadh Check Post. This shall

be done within two days from today and upon the petitioner paying the said amount to the concerned authority, respondent Nos. 1 to 3 shall release the petitioner's truck lying at Songadh Check Post.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted today.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-